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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 KEVIN A BROWN,

9 Plaintiff,

10 v.

11 DEPARTMENT OF CORRECTIONS, et  
al.,

12 Defendants.

CASE NO. 3:17-CV-05524-BHS-DWC

ORDER DIRECTING SERVICE OF  
CIVIL RIGHTS COMPLAINT

13 This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff is proceeding  
14 with this action *pro se* and *in forma pauperis*. Plaintiff is currently incarcerated at the Clallam  
15 Bay Corrections Center and is subject to the Court's Prisoner E-Filing Initiative pursuant to  
16 General Order 06-16. The Court, having reviewed plaintiff's complaint, hereby **ORDERS** as  
17 follows:

18 (1) Service by Clerk

19 The Clerk is directed to send the following to the named defendants by e- mail: a copy of  
20 the complaint, a copy of this Order, two copies of the notice of lawsuit and request for waiver of  
21 service of summons, and a waiver of service of summons.  
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23

1           (2)    Response Required

2           Defendant(s) shall have **thirty (30) days** within which to return the enclosed waiver of  
3 service of summons. A defendant who timely returns the signed waiver shall have **sixty (60)**  
4 **days** after the date designated on the notice of lawsuit to file and serve an answer to the  
5 complaint or a motion permitted under Rule 12 of the Federal Rules of Civil Procedure.

6           A defendant who fails to timely return the signed waiver will be personally served with a  
7 summons and complaint, and may be required to pay the full costs of such service, pursuant to  
8 Rule 4(d)(2) of the Federal Rules of Civil Procedure. A defendant who has been personally  
9 served shall file an answer or motion permitted under Rule 12 within **thirty (30) days** after  
10 service.

11           (3)    Filing and Service by Parties, Generally

12           All attorneys admitted to practice before this Court are required to file documents  
13 electronically via the Court's CM/ECF system. Counsel are directed to the Court's website,  
14 [www.wawd.uscourts.gov](http://www.wawd.uscourts.gov), for a detailed description of the requirements for filing via CM/ECF.  
15 Plaintiff shall file all documents electronically. All filings must indicate in the upper right hand  
16 corner the name of the magistrate judge to whom the document is directed.

17           Any document filed with the Court must be accompanied by proof that it has been served  
18 upon all parties that have entered a notice of appearance in the underlying matter. Plaintiffs  
19 subject to the Court's E-Filing Initiative shall indicate the date the document is submitted for e-  
20 filing as the date of service.

21           (4)    Non-State Defendants

22           As a registered user of the Court's electronic filing system, you must accept electronic  
23 service of all court filings (**except** original service of a complaint) by prisoner litigants housed at

1 facilities actively engaged in the Prisoner E-Filing Initiative. Prisoner litigants incarcerated at  
2 facilities actively engaged in the Prisoner E-Filing Initiative are no longer required to serve their  
3 court filings on the Court or defendants by mail. Service by mail of your court filings to prison  
4 litigants housed in facilities actively engaged in the Prisoner E-Filing Initiative is also no longer  
5 required.

6 (5) Motions, Generally

7 Any request for court action shall be set forth in a motion, properly filed and served.  
8 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a  
9 part of the motion itself and not in a separate document. The motion shall include in its caption  
10 (immediately below the title of the motion) a designation of the date the motion is to be noted for  
11 consideration upon the Court's motion calendar.

12 Stipulated and agreed motions, motions to file over-length motions or briefs, motions for  
13 reconsideration, joint submissions pursuant to the option procedure established in LCR 37(a)(2),  
14 motions for default, requests for the clerk to enter default judgment, and motions for the court to  
15 enter default judgment where the opposing party has not appeared shall be noted for  
16 consideration on the day they are filed. *See* LCR 7(d)(1). All other non-dispositive motions  
17 shall be noted for consideration no earlier than the third Friday following filing and service of the  
18 motion. *See* LCR 7(d)(3). All dispositive motions shall be noted for consideration no earlier  
19 than the fourth Friday following filing and service of the motion. *Id.*

20 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-  
21 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday  
22 immediately preceding the date designated for consideration of the motion.  
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1 The party making the motion may electronically file and serve not later than 11:59 p.m.  
2 on the date designated for consideration of the motion, a reply to the opposing party's briefs and  
3 affidavits.

4 (6) Motions to Dismiss and Motions for Summary Judgment

5 Parties filing motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil  
6 Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil  
7 Procedure should acquaint themselves with those rules. As noted above, these motions shall be  
8 noted for consideration no earlier than the fourth Friday following filing and service of the  
9 motion.

10 Defendants filing motions to dismiss based on a failure to exhaust or motions for  
11 summary judgment are advised that they MUST serve a *Rand* notice concurrently with motions to  
12 dismiss based on a failure to exhaust and motions for summary judgment so that *pro se* prisoner  
13 plaintiffs will have fair, timely and adequate notice of what is required of them in order to  
14 oppose those motions. *Woods v. Carey*, 684 F.3d 934, 941 (9th Cir. 2012). The Ninth Circuit  
15 has set forth model language for such notices:

16 A motion for summary judgment under Rule 56 of the Federal Rules of  
17 Civil Procedure will, if granted, end your case.

18 Rule 56 tells you what you must do in order to oppose a motion for  
19 summary judgment. Generally, summary judgment must be granted when  
20 there is no genuine issue of material fact – that is, if there is no real  
21 dispute about any fact that would affect the result of your case, the party  
22 who asked for summary judgment is entitled to judgment as a matter of  
23 law, which will end your case. When a party you are suing makes a  
motion for summary judgment that is properly supported by declarations  
(or other sworn testimony), you cannot simply rely on what your  
complaint says. Instead, **you must set out specific facts in declarations,  
depositions, answers to interrogatories, or authenticated documents,  
as provided in Rule 56(e), that contradict the facts shown in the  
defendant's declarations and documents and show that there is a**

**genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.**

*Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (emphasis added).

Defendants who fail to file and serve the required *Rand* notice on plaintiff may have their motion stricken from the Court's calendar with leave to re-file.

(7) Direct Communications with District Judge or Magistrate Judge

No direct communication is to take place with the District Judge or Magistrate Judge with regard to this case. All relevant information and papers are to be directed to the Clerk.

(8) The Clerk shall also direct a copy of this Order and of the Court's *pro se* instruction sheet to petitioner. The Clerk is further directed to send a copy of this Order and a courtesy copy of the complaint to the Washington State Attorney General's Office by e-mail.

Dated this 9th day of August, 2017.

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David W. Christel  
United States Magistrate Judge